Angelica Healthcare Services Group, Inc. and Cynthia Brooks, Petitioner and Local 218, Textile Processors, Service Trades, Health Care Professional and Technical Employees International Union. Case 26–RD–936

January 18, 1995

DECISION ON REVIEW AND ORDER REMANDING PROCEEDING TO REGIONAL DIRECTOR FOR HEARING

BY CHAIRMAN GOULD AND MEMBERS STEPHENS, BROWNING, COHEN, AND TRUESDALE

On May 17, 1994, the Acting Regional Director for Region 26 of the National Labor Relations Board issued a Decision and Direction of Election in the above-captioned proceeding, finding, inter alia, that the petition was timely filed because it was not barred by a collective-bargaining agreement in effect between the Employer and the Union. Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Union filed a timely request for review of the Acting Regional Director's decision, contending that the petition was barred by the contract and in the alternative that a hearing should have been held prior to the issuance of the Decision and Direction of Election.

By Order dated June 15, 1994, the Board granted the Union's request for review, vacated the Acting Regional Director's decision, and stayed the election. The Board stated that a fully articulated decision would follow.

On June 28, 1994, the Board scheduled oral argument for July 28, 1994, because this case and another case (*Barre-National*, *Inc.*, Case 5–RC–14013) presented important issues in the administration of the National Labor Relations Act. On the scheduled date, the General Counsel, the Employer, the parties in the *Barre-National* case, and the amici curiae² presented oral arguments. The General Counsel, the Petitioner in the *Barre-National* case, and several of the amici curiae³ filed post-argument briefs.

The Board has considered the Acting Regional Director's decision in light of the record, the request for review, the oral arguments, and the post-argument briefs, and has decided to direct the holding of a hearing for the reasons set forth below.

On April 8, 1994, Cynthia Brooks, an individual, filed the decertification petition in this case. On April 29, 1994, the Acting Regional Director issued an Order to Show Cause why an election should not be directed.

On May 5, 1994, the Union filed a Response to Order to Show Cause, with supporting affidavit, asserting that the petition was untimely, because it was barred by a collective-bargaining agreement,⁴ and requesting that the petition be administratively dismissed. Alternatively, the Union requested that "a full hearing be held upon proper notice to all parties, so that an adequate record can be developed for appropriate review."

In his decision, the Acting Regional Director rejected the Union's contract-bar contentions, found that "[a] question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act," and directed an election. The Acting Regional Director did not address the Union's contention that if the petition were not dismissed, a hearing should be held.

Section 9(c)(1) of the Act states that when a representation petition has been filed, "the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice." (Emphasis added.) Section 9(c)(1) further states that "[i]f the Board finds upon the record of such hearing that such a question of representation exists," the Board shall direct a secret-ballot election.

Section 102.63(a) of the Board's Rules and Regulations provides in pertinent part as follows with respect to cases such as this one in which the parties do not enter into a consent-election agreement:

[I]f it appears to the Regional Director that there is reasonable cause to believe that a question of representation affecting commerce exists, that the policies of the Act will be effectuated, and that an election will reflect the free choice of employees

¹ Member Browning, dissenting in part, agreed to grant review, but would not have stayed the election. Member Cohen concurred in granting review and staying the election, but would additionally have remanded to the Regional Director with instructions to proceed to a hearing forthwith.

²The American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), the Chamber of Commerce of the United States of America (Chamber of Commerce), the Labor Policy Association, the Council on Labor Law Equality, the Associated General Contractors of America, Inc. (AGC), U.S. Home Care Company, and American Health Care Association, et al.

³ The AFL-CIO, Chamber of Commerce, AGC, U.S. Home Care Company, and American Health Care Association, et al.

⁴The Union's collective-bargaining agreement with the Employer was effective from April 7, 1991, through April 9, 1994. The Union presented two contract-bar arguments. First, the Union contended that it had agreed to an expiration date of April 9, 1994, rather than April 7, 1994, in order to accommodate the Employer's automated payroll and accounting systems. The Union claimed that the Board should apply its 3-year contract-bar rule flexibly to bar the petition filed here on April 8, 1994. Second, the Union asserted that if the Board applies the 3-year contract bar strictly, then the Board should treat the contract as having been automatically renewed on April 7, 1994, because the contract provides for automatic renewal where, as here, no party has given timely notice of termination. Under this theory, the automatic renewal of the contract on April 7, 1994, would bar the petition filed the following day.

in the appropriate unit, the Regional Director shall prepare . . . a notice of hearing before a hearing officer at a time and place fixed therein.

We find that the language of Section 9(c)(1) of the Act and Section 102.63(a) of the Board's Rules required the Acting Regional Director to provide "an appropriate hearing" prior to finding that a question concerning representation existed and directing an election.⁵ Because the Acting Regional Director erred in

Chairman Gould does not subscribe to any reliance upon Section 101.20, as quoted, on the ground that it addresses issues not presented in this case. Cf. Justice Brandeis' concurring opinion addressing this issue in the constitutional context in *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 341 (1936).

failing to hold a hearing, we conclude that a hearing should now be held. We shall remand the case to the Regional Director to arrange the hearing and to take further appropriate action.⁶

ORDER

It is ordered that a hearing be held before a duly designated hearing officer.

It is further ordered that this proceeding is remanded to the Regional Director for Region 26 to arrange the hearing and to take further appropriate action.

⁵We also note Sec. 101.20 of the Statements of Procedure which provides that, at the hearing, "[t]he parties are afforded full opportunity to present their respective positions and to produce the significant facts in support of their contentions."

⁶Because the Acting Regional Director failed to hold a hearing of any type prior to directing the election, we find it unnecessary to decide in this case the type of hearing that would be necessary to satisfy the Act's "appropriate hearing" requirement.